

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND  
SOUTHWEST AREAS PENSION FUND,  
and HOWARD McDOUGALL, trustee,  
  
Plaintiffs,  
  
v.  
  
DON DARR CHEVROLET, INC., a Delaware  
corporation,  
  
Defendant.

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Case No. 08 C 1095  
Judge Joan B. Gottschall  
Magistrate Judge Maria Valdez

## **FIRST AMENDED COMPLAINT**

Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund and Howard McDougall, one of its present trustees, for a cause of action against Defendant Don Darr Chevrolet, Inc. allege as follows:

## JURISDICTION AND VENUE

1. This is an action for collection of withdrawal liability, interest, and penalties incurred by an employer as a result of a withdrawal from a multiemployer pension plan.

2. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1001 et seq. (1982). This Court has jurisdiction over this action under sections 502(e), 502(f) and 4301(c) of ERISA, 29 U.S.C. §§ 1132(e), 1132(f) and 1451(c).

3. Venue lies in this Court under sections 502(e)(2) and 4301(d) of ERISA, 29 U.S.C. §§ 1132(e)(2) and 1451(d), because the Pension Fund is administered at its principal place of business in Rosemont, Illinois. Venue also lies in this Court pursuant to the Pension Fund Trust Agreement.

### **PARTIES**

4. Plaintiff Pension Fund is a multiemployer pension plan within the meaning of sections 3(37) and 4001(a)(3) of ERISA, 29 U.S.C. §§ 1002(37) and 1301(a)(3). Plaintiff Howard McDougall is a present trustee of the Pension Fund and he and his fellow trustees are the plan sponsors of the Pension Fund within the meaning of section 4001(a)(10) of ERISA, 29 U.S.C. § 1301(a)(10). The Trustees administer the Pension Fund at 9377 West Higgins Road, Rosemont, Illinois, 60018.

5. Pursuant to sections 502(a)(3) and 4301(a)(1) of ERISA, 29 U.S.C. §§ 1132(a)(3) and 1451(a)(1), the Trustees are authorized to bring this action on behalf of the Pension Fund, its participants, and beneficiaries for the purpose of collecting withdrawal liability.

6. Defendant Don Darr Chevrolet, Inc. ("Don Darr Chevrolet") is a Delaware corporation with its principal place of business located in the State of Missouri.

### **CLAIM FOR RELIEF**

7. Defendant Don Darr Chevrolet was subject to collective bargaining agreements between itself and various local unions affiliated with the International Brotherhood of Teamsters pursuant to which it was required to make contributions to the Pension Fund on behalf of certain of its employees.

8. The Pension Fund has determined that on or about June 16, 2007, Defendant Don Darr Chevrolet permanently ceased all covered operations requiring contributions to the Pension Fund thereby effecting a "complete withdrawal" from the Pension Fund within the meaning of section 4203 of ERISA, 29 U.S.C. § 1383.

9. As a result of this complete withdrawal Defendant Don Darr Chevrolet incurred withdrawal liability issued by the Pension Fund in the amount of \$798,252.85, as determined under section 4201(b) of ERISA, 29 U.S.C. § 1381(b).

10. On or about May 27, 2008, Defendant Don Darr Chevrolet, through counsel, received a notice and demand for payment of withdrawal liability issued by the Pension

Fund in accordance with sections 4202(2) and 4219(b)(1) of ERISA, 29 U.S.C. §§ 1382(2) and 1399(b)(1). The notice and demand notified Defendant Don Darr Chevrolet that in light of the asset sale of the Defendant to Bommarito Pontiac South, Inc., the Pension Fund believed there was a substantial likelihood that the Defendant Don Darr Chevrolet would be unable to pay its withdrawal liability and as a result, pursuant to section 4219(c)(5)(B) of ERISA and Appendix E, Section 5(e)(2)(E) of the Pension Plan, Defendant Don Darr Chevrolet was required to immediately pay the entire withdrawal assessment of \$798,252.85.

11. Defendant Don Darr Chevrolet never requested that the Pension Fund review its withdrawal liability determination pursuant to § 4219(b)(2)(A) of ERISA, 29 U.S.C. § 1399(b)(2)(A).

12. Defendant Don Darr Chevrolet did not timely initiate arbitration of the Pension Fund's withdrawal liability determination pursuant to § 4221(a)(1) of ERISA, 29 U.S.C. § 1401(a)(1). Consequently, the amounts demanded by the Pension Fund are due and owing pursuant to § 4221(b)(1) of ERISA, 29 U.S.C. § 1401(b)(1).

13. To date, Defendant Don Darr Chevrolet has not paid any of the withdrawal liability assessment, and is therefore in default within the meaning of section 4219(c)(5) of ERISA, 29 U.S.C. §1399(c)(5).

**WHEREFORE**, Plaintiffs request the following relief:

(a) A judgment against the Defendant Don Darr Chevrolet, Inc., a Delaware corporation and on behalf of Plaintiffs, pursuant sections 502(g)(2) and 4301(b) of ERISA, 29 U.S.C. § 1132(g)(2) and 1451(b), for:

(1) \$798,252.85 in withdrawal liability;

(2) interest computed and charged at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by Chase Manhattan Bank (New York, New York) for the fifteenth day of the month for which interest is charged;

- (3) an amount equal to the greater of the interest on the withdrawal liability or liquidated damages of 20% of the withdrawal liability;
  - (4) attorney's fees and costs; and
  - (5) post-judgment interest computed and charged on the entire judgment balance at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by Chase Manhattan Bank (New York, New York) for the fifteenth day of the month for which interest is charged compounded annually; and
- (b) For such further or different relief as this Court may deem proper and just.

Respectfully submitted,

September 10, 2008

s/ Rathna C. Rodgers  
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